XII-189 / (Jail)
C. J. P. R. 11/94/2,000

CF0000061621

CA 1114/97

(21)

Division Bench (Criminal)

APPEAL OF PRISONER

No. 5343/55 Name गोरेलाल उर्फ खोरबा

Father's name कुनूराम Age उम्र — 22 — वर्ष

Residence ग्रा: मोहगांवचौकी थाना पलारी, जिला: रायपुर (मध्य प्र)

Sentenced to आजीवन कारावास एवं जुर्माना On 12/3/54

Under section 376 (2) (च) 5000 रुपये by भान: अति: सत्र न्याय बलौदाबाजार

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received ..... 14/2?

3 Date on which Appeal sent 23/5/97

4 Whether the prisoner wishes to be represented or not – Yes / No

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No. 5343 Name गोरेलाल उर्फ खोरबा, कुनूराम

Confined in जेल रोपा Jail रायपुर (मध्य)

No. 149/विविध/97 Dated 23/4/ 1997

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ अति. सेशन्स महोदय रायपुर संभाग रायपुर together which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न :— (1) प्रकरण क्रमांक 241/54 की प्रमाणित नकल अति विधि।

Superintendent
Central Jail, Raipur. (M.P.)
..... Jail .....

Date of receipt in ..... office .....

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

No ..... Dated ..... 199.

Forwarded to the ..... JABALPUR .....

.....

Date of receipt in Appellate Court .....

High Court of Madhya Pradesh
JABALPUR
27 MAY
Reg No. 414
Recpt Clerk
High Court, Jabalpur

(P. T. O.)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... Cr. A. 1114/97 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 1114 of 1997

Appellant : **Gaur Singh @ Khorva**

Vs.

Respondent : **State of Madhya Pradesh**

Shri Abhijeet Sarkar, learned counsel for the appellant.

Shri U.N.S. Deo, learned Additional Public Prosecutor with Shri M.P.S. Bhatia, learned P.L. for the respondent/State.

ORAL JUDGMENT
(19.04.2006)

L.C.Bhadoo, J

By this appeal under Section 374(2) of the Criminal Procedure Code, the accused/appellant has questioned the legality, propriety and correctness of the judgment of conviction and order of sentence dated 12.03.97 passed by learned Additional Sessions Judge, Baloda Bazar, District Raipur in S.T. No. 241/94 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of offence under Section 376 (2) (f) of the IPC sentenced him to undergo imprisonment for life and to pay a fine of Rs. 5,000/-, in default of payment of fine to further undergo RI for one year.

2. Case of the prosecution necessary for the disposal of this appeal, as narrated in the First Information Report P-1 was that on 10.01.94, in between 3.00 to 5.00 p.m., prosecutrix namely Ku. Toman Bai went to

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... Cr. A. 1119/97 ..... **सन् 200**—

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

collect cow dung in village Devgaon Khaar. When she was collecting cow dung of the animals of the accused/appellant, the accused came near the prosecutrix and persuaded her for the sexual intercourse. However, she refused on which the accused/appellant in order to have forcible intercourse with her caught hold of her and dashed her in the field. At this, she raised screams whereupon the accused/appellant dragged her legs into the field on account of which she sustained injuries on nose, eyes and head and blood was oozing out of the injuries. When she raised screams the accused/appellant closed her mouth with his hands and inserted leaves on her mouth, pressed her neck by both the hands and said that if she raise cries then he will kill her. Thereafter he removed her underwear and had intercourse with her. The prosecutrix became unconscious. Considering her as dead, the accused/appellant left her, when she regained consciousness, in the evening, she came to her house, informed about the incident to her mother Urvashi & grand mother Manmouti. The next day, in the morning, she informed about the incident to her Uncle Dukalu, who took her to Palari for treatment and lodged the report in the police station. On receiving this report Ex. P-1, the SHO of police station Palari registered the crime under Sections 376 and 307 of the IPC and Section 3 (12) of the SC/ST (Prevention of Atrocities) Act, 1989 and left for the scene of occurrence. Under Ex. P-2, plain soil and blood stained soil from the place of occurrence were taken into possession. He also took into possession two ear rings of the prosecutrix and one cloth stained with blood. He took into possession one petticoat and Terri cot shirt of the prosecutrix under P-3. The prosecutrix was sent to the lady doctor of Primary Health Centre, Palari for examination where Dr. Nihar Bajpai examined her and prepared report P-4 in which she noticed injuries on the

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... Cr.A. 1114/97 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

cheek, nose, mouth and lower lip of the prosecutrix. She also found that hymen was ruptured and there were lacerations in the vaginal canal. There was sign of intercourse. She also opined that the prosecutrix was aged seven years with upper age limit relaxable by three years. She examined the petticoat and shirt of the prosecutrix and found blood and semen like stains present and she prepared the report Ex.P-5. The accused was sent for examination in order to ascertain the potency to have intercourse to D.K. Hospital, Raipur where Dr. M.P. Pujari after examination prepared the report Ex. P-11 and opined that the accused is capable for intercourse. The recovered articles, clothes and soil slides were sent for examination to the Forensic Science Laboratory, Raipur from where report Ex.P-12 was received. After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Raipur who in turn committed the case to the Sessions Judge, Raipur from where the learned Additional Sessions Judge, Raipur received the case on transfer for trial.

3. The prosecution in order to establish the charge against the accused/appellant examined as many as seventeen witnesses. Statement of the accused was also recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he has been falsely implicated in the crime on account of animosity.

4. Learned Additional Sessions Judge after hearing the counsel for the parties convicted and sentenced the accused/appellant as mentioned in paragraph one of this judgment.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... Cr.A.1114/97 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश –4–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
5.	We have heard Shri Abhijeet Sarkar on behalf of the accused/appellant and Shri U.N.S.Deo with Shri M.P.S. Bhatia on behalf of the State.	
6.	P.W.-1 Toman Bai i.e. the prosecutrix has stated that on the fateful day she went to collect the cow dung in the filed where accused met her and caught hold of her, dashed her in the field and after that he committed rape on her as a result of which she received injuries on the mouth and other parts. When she returned to the house, she informed about the fact to his mother, grand mother and his uncle on which report P-1 was lodged.	
7.	In the cross examination of this witness, the defence has not been able to elicit any circumstance which makes this evidence untrustworthy or unreliable. The evidence of this prosecutrix stands corroborated by the statement of P.W.-2 Khemlal Sahu who has stated that he accompanied Toman Bai to the police station and saw that there was swelling on her face. He has further stated that the ear rings, petticoat and the blood stained soil were taken into possession under P-2.	
8.	P.W.-5 Dukalu, uncle of the prosecutrix has stated that prosecutrix (Toman Bai) was residing with him as her father was dead and he was informed about the rape by the mother and grand mother of the prosecutrix. He has also stated that he saw injuries on the neck and face of the prosecutrix and blood was oozing out of the injuries.	
9.	Similar is the evidence of P.W.-6 Kamal who has stated that he saw the injuries on the body of Toman Bai. P.W.-7 Dharam has also corroborated the above evidence. P.W.-13, Urvashi, mother of the prosecutrix has also corroborated the evidence of P.W.-1.	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 1114/97 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश –5–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
10.	P.W.-4 Dr. Nihar Bajpai has stated that on 11.01.94 she examined prosecutrix Toman Bai and found that there was abrasion on the right cheek in the size of 5 x 2 cm., one abrasion on the nose and there were marks of injuries around the face and on the lower lip. She has further stated that on examination of the vaginal part, she found that both the labia were in swollen condition, there were injuries on the hymen and there was bleeding from the vagina. The age of the prosecutrix was about seven years and the hymen of the prosecutrix was ruptured. She opined that the injuries which were found on the vagina could be caused while committing the rape.	
11.	P.W.-9 Sundar Das, Kotwar has stated that he is maintaining the birth register P-8 in which the date of birth of the prosecutrix was recorded as 3.11.86 and as per the evidence of P.W.-14 Dr. M. P. Pujari who examined the accused/appellant, found that the accused was potent and competent to have intercourse and his report is Ex.P-11. Therefore, from the above evidence it is established that the age of the prosecutrix on the date of incident was about seven years and the evidence of the prosecutrix that the accused committed rape on her stands corroborated by the medical evidence of P.W.-4 Dr. Nihar Bajpai as also other witnesses who saw her in injured condition. Even her ear rings were taken into possession from the place of occurrence.	
12.	In view of the above, there is ample evidence regarding the involvement of the accused/appellant committing rape on prosecutrix Toman Bai. Thus, we do not find any illegality or infirmity in the judgment of the trial Court.	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. 1114/97 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश – 6 –	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
13.	Learned counsel for the accused/appellant argued that as per the provisions of Section 376 (2) (f) of the IPC, the minimum sentence has been prescribed at ten years and which may be extended to life and also fine. The accused/appellant is in custody since 13.02.94 thereby he has already undergone almost twelve years and as such he be let off under the undergone sentence.	
14.	On the other hand Shri U.N.S.Deo with Shri M.P.S. Bhatia on the behalf of the State opposes the above argument of the counsel for the accused/appellant.	
15.	Having heard the counsel for the parties, having regard to the circumstances of the case and having regard to the fact that the accused/appellant has almost undergone twelve years of sentence and the accused was aged 22 years old at the time of commission of the offence, we are of the considered opinion that if the accused is sentenced to undergo the sentence which he has already undergone it will meet the ends of justice.	
16.	In the result, while maintaining the conviction under Section 376 (2) (f) of the IPC, the appeal is partly allowed. The impugned judgment sentencing the appellant to undergo life imprisonment is set aside. However, the appellant is sentenced to the period already undergone by him.	
	Sd/- L.C. Bhadoo Judge	Sd/- Dhirendra Mishra Judge

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21.4.06